

**FINAL MINUTES
OF THE PUBLIC MEETING
OF THE BOARD OF OPTOMETRY**

September 8, 2003

1. Call to Order

The meeting was called to order at 9:10 a.m. by Dr. Hernandez. Present were Messieurs. De La Cruz and Naranjo, Ms. Rosas and Drs. Goldstein, Hernandez, Pollack, Yarwood and Yu. Also present were Staff Members Rex Farmer, Jane Flint, and Taryn Smith, and Staff Counsel Don Chang and Robert Miller.
2. Approval of Minutes

Move to approve the minutes of the May 22, 2003 meeting. M – Goldstein, S – De La Cruz, MSP, unanimous.
3. Discussion of Future Strategic Planning

Dr. Goldstein, Ms. Rosas and Mr. Naranjo were appointed to work with Ms. Smith with regard to Strategic Planning.

Move to accept staff recommendation 1. State-approved consultants via Master Services Agreement (MSA) for strategic planning. M – Rosas, S – Goldstein, MSP, unanimous.
4. Consider Establishing a Finance Committee

Move to establish a Finance Committee. M – Hernandez, S – Goldstein, MSP, unanimous.

Dr. Yarwood was appointed to chair the Finance Committee and Dr. Pollack was appointed to the committee.
5. Continuing Education Committee

Dr. Yu reported that the committee had met for the first time on August 22, 2003. Dr Yu was appointed Committee Chair by Dr. Hernandez. The Committee took the following actions:

 - Voted to recommend regulation changes regarding the CE requirements for new licensees, self-study alternatives and technical clean-up language.

- Reviewed the CE course approval process in an effort to streamline the process and delegating to staff the authority to approve courses offered by certain providers.
- Directed staff to develop a CE tracking form to be used by licensees.
- Discussed the current process for CE audits and directed staff to investigate the cost effectiveness of augmenting the number of audits performed annually.
- Identified outstanding CE-related issues for future meetings.

6. Continuing Education Regulations

Move to adopt proposed language to amend Title 16, California Code of Regulations Section 1536 and proceed with the regulatory process. M – Rosas, S – Goldstein, MSP, unanimous.

7. EO Report

Ms. Smith reported on the following:

- Status of the Examination and Licensure Programs. Licensing Program backlog due to vacant ½ time position and being asked to produce documents in conjunction with pending litigation.
- Requests for Budget Change Proposals were submitted to Department of Finance to augment the Board's budget for additional staff, enforcement, outreach and occupational analysis of optometric technicians. The request for funds to perform an occupational analysis was submitted in an effort to comply with a JLSRC recommendation.
- Staff is working with DGS to correct the ongoing problem of the Board being charged for a large volume of apparent fraudulent calls to Board's toll free phone line.

- A work plan to address operational improvements has been developed and will be implemented on an ongoing basis.
- The Board has submitted its 360-day response to the performance audit that was conducted in 2002. A follow up audit has not been scheduled to date.

8. Case Processing Overview

The Board's new Liaison to the Attorney General's Office, Char Sachson, provided an overview of how the Board's enforcement cases are processed once they reach the Attorney General's Office.

9. Pearle Vision

Antoinette Cincotta, the lead Deputy Attorney General assigned the People v. Cole National Corporation; Pearle Vision, Inc. provided a briefing on the complaint and case status.

10. Lens Crafters

Jennifer Weck, the lead Deputy Attorney General assigned the National Association of Optometrists and Opticians (NAOO), LensCrafters, Inc., and Eye Care Centers of America v. Bill Lockyer and Kathleen Hamilton, provided a briefing on the charges and the status of the case.

11. Public Forum Regarding Treatment of Glaucoma

Dr. Goldstein and Mr. De La Cruz were appointed as members of a committee to review the procedure to process glaucoma certification applications. The following is a summary of the discussion regarding the treatment of glaucoma:

- Larry Thal, O. D., President, California Optometric Association and Clinical Professor at U.C. Berkeley introduced speakers and resource persons. Dr. Thal stated that they were not asking that the scope of 929 be expanded, but that the scope of practice not be limited,

in the patient's interest with regard to access and quality of care.

- Robert B. Di Martino, O. D., private practitioner and Associate Clinical Faculty, U. C. Berkeley School of Optometry, teaches the 24 hour didactic curriculum and represented the COA in the negotiations leading up to SB 929. Dr. Di Martino stated that the glaucoma provisions were discussed and agreed upon at a meeting between Todd Kauffman, the Leg Chairman for COA, Mr. Jim Gross and Dr. Hardy of the American Academy. Dr. Di Martino believes that there is no ambiguity in the law that it is clear and stands on its own.
- David Cockrell, O. D., Chair of the American Optometric Association Scope of Practice Committee, President of the Oklahoma State Board of Optometry, in private practice treating glaucoma over 22 years. Dr. Cockrell spoke in favor of SB 929 and explained how the law compares to others in the United States. 45 states allow optometrists to treat all types of glaucoma. 3 states (Massachusetts, Maryland and Vermont) currently have legislation to allow practitioners to treat glaucoma. Optometrists have treated glaucoma in the United States since 1977, since 1981 in Oklahoma, and over the past ten years the number of states that allow optometric utilization of management of glaucoma has grown from 20 to 45 states. Only 5 states require collaborating treatment or co-management, all with far less restrictive requirements than California. In Oklahoma's history, no adverse litigation, judgements, or problems have been brought to the attention of the board or association. California is not breaking new ground compared to the other 45 and not the first or leading state as it

pertains to increasing the scope of practice.

- Les Walls, O. D., President Southern California College of Optometry (SCCO) spoke in favor of the implementation of SB 929 as outlined in Senator Polanco's letter of legislative intent. Dr. Walls thinks it's overkill, but a wonderful opportunity for continuing education for those in practice and to tune up the students after graduation just to be sure. It will be a good educational experience.
- Dr. Goldstein asked Dr. Walls for some insight on how the collaborative process ought to work from an educational standpoint and for his opinion or some ideas on how the Board might implement that process.
- Dr. Walls stated there is more than one way to satisfactorily implement co-management of patients. It is educationally sound to have it occur in the presence of experts in a grand rounds format. Dr. Walls has no fault with one on one collaboration, and thinks it works well. Dr. Walls believes collaboration in a group environment, is an outstanding way to conduct education and endorses it fully.
- Dr. Hernandez asked how the program at the SCCO works, who's involved and what the outcome has been.
- Dr. Walls explained that a group of practitioners, a full time ophthalmologist, and another ophthalmologist conduct clinical grand rounds. He stated that it's an ideal model and works well. The program was implemented not promising anything, but assuring the

practitioners they will have the best possible education in glaucoma.

- Dr. Hernandez inquired as to the doctor patient ratio.
- Dr. Walls explained that the ratio is 10 optometrists to 2 faculty members, i.e. an ophthalmologist and an optometrist who has been highly trained in the treatment of glaucoma.
- 1 to the ophthalmologist, and the practitioners with the ophthalmologists, and Dr. Hernandez asked if there were similar models in medicine.
- Dr. Walls explained that it is commonplace in medicine. It is a standard way of treatment and there is not a department in any major medical school that doesn't treat with grand rounds.
- Edward Revelli, O. D., Director of Clinics, U. C. Berkeley School of Optometry discussed the present training program for clinical faculty. He outlined some of the difficulties for individual practitioners to meet the requirements set forth in SB 929. The present program at UCB is designed to have 56 patients for 15 optometrists, 2 ophthalmologists and 4 optometrists trained in glaucoma, who've done a residency in ocular disease. The patients are scheduled, one patient to three optometrists. The optometrists spend hours reviewing charts and making treatment decisions independently, before seeing the patients. The faculty meets 3 times yearly with the 15 optometrists, the ophthalmologists, glaucoma-certified optometrists and the patients. There is an annual grand rounds where faculty present patients to colleagues, raising the level of

education and exceeding that of the bill.

- Dr. Yu asked Dr. Revelli how he saw the program expanding to the general practitioner.
- Dr. Revelli explained it would be expanded as Dr. Walls outlined. That the grand rounds program is the best way of training, there's more challenging patient discussion, the opportunity of someone critiquing treatment plans and diagnosis and the ratios make more sense. It would be more cost effective than the present. The total number of training hours for the 2-year period is approaching 335.
- Dr. Yarwood asked if the restrictive scope of practice was encouraging students within California schools to stay in California.
- Dr. Revelli explained that many interns leave as a result of this. After graduation, some have diagnosed or managed many glaucoma patients. When faced with this hurdle, another fifty patients over another 2 years, on top of the 8 years invested, they often leave the state for states where they can practice glaucoma based on the education from the California schools.
- Dr. Hernandez asked if there was anyone else interested in speaking on glaucoma in the public forum. Hearing none, public comment was closed. Dr. Hernandez stated that there had been question of whether there should be additional regulations. The bill was negotiated over a 2-year period, and stands on it's own. The letter of intent from Senator Polanco states his legislative intent. A legislative counsel opinion states it is not necessary to implement regulations.

The legislation stands on its own merit it's clear, distinct, and it is the professional discretion between an ophthalmologist and optometrist to determine if a patient qualifies as one of the 50 patients. It is clear that before one can treat, the patient must be given a signed document, signed by the optometrist and ophthalmologist, agreeing to collaborate and that individual should qualify as 1 of the 50 patients. Dr. Hernandez stated that this was his personal opinion and wanted to state it publicly.

- Dr Yu asked whether there are potential ramifications or negative consequences of having a broadly interpreted statute without supporting regulations.
- Staff Counsel, Robert Miller explained that the general purpose of a regulation is to establish a standard application. Adopting standards of general application without formal regulation can create an underground regulation and may be subject to challenge for not having been adopted properly. Mr. Miller was not sure if this is something that can be properly administered on a case by case basis, or whether there is need for implementing regulations to clarify, interpret and make specific certain provisions. In general, the provisions of SB 929 are specific and should be self executed. That may not be true for all provisions. There are potential benefits to regulations. It gives applicants guidance to have specific standards laid out in more detail than the statutes. The Board will have to rule on pending applications without benefit of anything other than the statutes. The statutes may be self-executing; you may be able to apply the statutes sufficiently on a case by case basis. It might be useful for a

special committee of the Board and Staff review the pending applications.

- Dr. Goldstein stated that his concern was the co-management component and believes if there's a problem with regard to the law it's probably too specific. The question is interpretation and does it require regulation. Assuming there were several different models, that could be discussed theoretically. California optometrists are being paid for treating glaucoma regularly. They can treat glaucoma in a collaborative forum; glaucoma related services, and are being appropriately compensated. There is not a mandatory need for regulations to interpret collaboration.
- Mr. Miller discussed various scenarios in which regulations may or may not be required.
- Dr. Hernandez inquired whether there were any further comments and hearing none, stated he did not feel a fervor of the majority of the Board to move forward with regulations.
- Dr. Yu stated volunteered to work on an ad hoc committee to investigate and research the matter further.
- Ms. Rosas recommended that if a committee is established that it includes a Board Member representing the consumer side, possibly the Vice Chair.
- Dr. Hernandez clarified that the committee would review the applications for glaucoma certification, not taking a position as to whether further regulations are necessary. Still not hearing the fervor or consensus of the Board to pursue regulations. It's the

consensus of the Board that no regulations are necessary? The legislation stands on it's own and unless there's opposition it should be left to the professional discretion of the ophthalmologist and optometrist. Dr. Hernandez read Section I of the legislation of SB 929 which he stated to be very specific and clear:

“ (I) The optometrist shall provide the following information to the patient in writing: nature of the working or suspected diagnosis, consultation evaluation by a collaborating ophthalmologist, treatment plan goals, expected follow-up care, and a description of the referral requirements. The document containing the information shall be signed and dated by both the optometrist and the ophthalmologist and maintained in their files. “

- Dr. Goldstein indicated that he did not disagree; however, while there's not fervor to pursue regulations, there is concern that this is done appropriately, in the public interest and with Counsel's input.
- Dr. Yu stated that she was interested in making sure that SB 929 is implemented in a manner that does not leave the Board open and vulnerable to challenge.
- Mr. Miller stated that there does seem to be a consensus that at least one element of the statute should be implemented by regulation, with respect to optometric assistants. The Board should pursue that topic by regulation. The immediate need is to determine how to handle the pending applications. Whether they can be acted upon and whether it necessary to pursue regulations could be put on the agenda for the next meeting.

- Dr. Goldstein stated there is a need to have a process for optometrists to have the ability to treat glaucoma.
- Dr. Hernandez requested that the record reflect that Mary Rosas will no longer be present.

12. Future Meetings

The following dates were tentatively set as future meeting dates:

- January 9 or 16, 2004
- April 2, 2004
- July 9, 2004
- November 5, 2004

13. Public Comment

None.

14. New Business

None.

15. Enforcement Actions

Closed Session

The Board voted to adopt the Proposed Stipulated Settlement in the Matter of the Accusation Against: Donald Earl Louie.

The Board voted to adopt the Proposed Stipulated Settlement in the Matter of the Accusation Against: Howard Joel Weiss.

The Board voted to adopt the Proposed Stipulated Settlement in the Matter of the Accusation and Petition to revoke Probation Against: Stuart Mark Mann.

The Board voted to adopt the Proposed Decision in the Matter of the Accusation Against: Steven Lars Vensand.

Adjournment

The meeting was adjourned at 3:40 p.m.